

## CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 165

November 13, 1957

### RESIDENCE: INCOMPETENTS

#### Syllabus:

The residence of a person who entered this state as a legally adjudicated incompetent is determined in the same manner as a competent person.

Taxpayer, a ward of an Illinois court as an adjudicated incompetent, came to California in 1947 for reasons connected with his health. He is to remain here as long as it appears conducive to his physical health and mental well-being. Taxpayer has obtained employment in this State. The Legislature in 1951 repealed the provision of Section 17014 of the Personal Income Tax Law which excluded from the definition of resident any person who was legally adjudicated an incompetent at the time he entered the State and remained so during his stay here. That provision was in effect when taxpayer entered this State. Advice is requested as to whether taxpayer can assert this provision for 1951 and following years and, if not, whether he is a resident of this State.

The fact that tax statutes can be retroactively applied (Brushaber v Union Pacific R.R. Co., 240 U.S. 1,; So. Maryland Fair Assn. v Comm., 40 BTA 549) strongly negates the theory of a vested right in a tax statute. In the early decisions in Rector v Philadelphia, 24 How. 300 U.S. S. Ct. and Sears v Board of Assessors, 18 Hun. 836 aff'd N.Y. 610 the courts established the rule that a taxpayer has no vested right in any particular tax statute. Further, tax statutes become effective the year they are enacted unless otherwise provided for by the Legislature. Appeal of Harry Fink and Company and Lernich, Inc., State Board of Equalization, October 25, 1935. Consequently, the incompetency clause regarding residency is no longer applicable.

In view of the fact that the duration of his stay in California is so indefinite the taxpayer must be considered to be here for other than a temporary or transitory purpose and, therefore, a resident. Regulation 17013-17015(b). The fact he is an incompetent is not material. Opinion No. NS-1717 (6126139) of the Attorney General ruled that an incompetent can acquire a resident status. Therefore, taxpayer being present within this State for other than a temporary or transitory purpose, and the incompetency clause being no longer effective, taxpayer should be taxed as a resident.